



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0032]

RIN 1625-AA11

Regulated Navigation Areas; Escorted Submarines Sector Jacksonville Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing regulated navigation areas (RNA) covering the St. Marys Entrance Channel, portions of the Cumberland Sound, and the Atlantic Ocean that will be in effect whenever any Navy submarine (foreign or domestic) is escorted by the Coast Guard and operating within the jurisdictional waters of the Sector Jacksonville Captain of the Port Zone. These RNAs are necessary to help ensure the safety and security of submarines, their Coast Guard escorts, and the public. The RNAs will do so by requiring all persons and vessels located within an RNA to follow lawful orders and/or directions given to them by Coast Guard designated representatives. Additionally, these RNAs will supersede the current temporary safety/security zone for Cumberland Sound, Georgia and St. Marys River Entrance Channel.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the

docket, go to <http://www.regulations.gov>, type USCG-2016-0032 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Allan Storm, Coast Guard Sector Jacksonville, Chief of Waterways Management, telephone (904) 714–7616, e-mail Allan.H.Storm@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

Navy submarines frequently operate within the Cumberland Sound and the St. Marys Entrance Channel. When transiting these areas, the submarines and the vessels towing them are severely restricted in their ability to maneuver or deviate course. Due to the safety and security concerns involved with submarine operations near shore in restricted waters, the Coast Guard provides submarine escorts when they are operating in those areas and offshore in the Atlantic Ocean.

Because the existing regulatory options the Coast Guard uses to safeguard the movement of submarines, their Coast Guard escorts, and the public are insufficient, the Coast Guard published a notice of proposed rulemaking (NPRM) on June 13, 2016, titled “Regulated Navigation Areas; Escorted Submarines Sector Jacksonville Captain of the Port Zone” (81 FR 38119). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action. During the comment period that ended

July 13, 2016, we received no public comments and two interagency comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Coast Guard has determined that RNAs are necessary to allow designated Coast Guard representatives adequate time to effectively order and/or direct persons and vessels operating within a RNA to stop, move, change orientation, or take other action as needed to ensure safety and/or security. The ability to order and/or direct persons and vessels will help avoid unnecessary and potentially dangerous close quarters contact between Coast Guard escorts and the maritime public within Cumberland Sound, the St. Marys Entrance Channel, and offshore in the Atlantic Ocean. In addition, it will give Coast Guard escorts an additional tool for determining the intention of vessels that are operating in close vicinity to an escorted submarine. The RNAs will mitigate the risks associated with these issues, and ensure the safety and security of the submarines, their Coast Guard escorts, and the maritime public.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no public comments on the NPRM published on June 13, 2016. To better define the northern extent of the RNA, we have incorporated one change to the rule based on an interagency comment. The change includes adding the words “the southern tip of” to the Crab Island position.

This rule establishes a regulated area encompassing all waters within one (1) nautical mile of the charted center of the navigation channel from the southern tip of Crab Island in the Cumberland Sound, Georgia, to the St. Marys Entrance Channel and its approach extending eastward to lighted buoy “STM.” This portion of the regulation

would allow Coast Guard vessels to direct waterway traffic in any portion of this confined channel when a submarine is being escorted.

Additionally, a regulated area will encompass waters within one (1) nautical mile of any Navy submarine while it is transiting territorial seas within the Sector Jacksonville Captain of the Port Zone. All persons and vessels located within the RNA are required to follow lawful orders and/or directions given to them by designated Coast Guard representatives.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

The Coast Guard made this determination based on the fact that (1) the RNAs are only enforced for the short periods of time when submarines are operating in the St. Marys Entrance Channel, portions of the Cumberland Sound, and Atlantic Ocean and escorted by the Coast Guard or anytime a submarine is operating and escorted by the

Coast Guard within the Sector Jacksonville Captain of the Port Zone territorial seas and (2) vessels may freely operate within the RNAs to the extent permitted by other law or regulation unless given a lawful order and/or direction by designated Coast Guard representatives.

The Coast Guard has determined that this rule, superseding the temporary safety/security zone implemented under 33 CFR 165.731(b), does not constitute a “significant regulatory action” under Executive Order 12866 based on the size and location of the security zone. The permanent security zone currently implemented under 33 CFR 165.731(a) remains in effect and covers approximately five square nautical miles of a sparsely populated section of Cumberland Sound and tributaries where few recreational or commercial vessels transit. Vessels transiting this area of Cumberland Sound can transit around the security zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard did not receive any comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the RNA may be small entities, for the reasons stated in section V.A above, this rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of RNAs and an amendment to a safety/security zone covering the St. Marys Entrance Channel, portions of the Cumberland Sound, and

Atlantic Ocean, that will be enforced whenever any Navy submarine (foreign or domestic) is being escorted by the Coast Guard and operating within the jurisdictional waters of the Sector Jacksonville Captain of the Port Zone. It is categorically excluded from further review under paragraph 34(g) of figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.731 to read as follows:

§ 165.731 Security Zone: Cumberland Sound, Georgia.

(a) *Definition.* The term “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port (COTP) Jacksonville, Florida, in the enforcement of the regulated areas.

(b) *Location.* A permanent security zone is established within the following coordinates, the area enclosed by a line starting at 30°44'55" N, 081°29'39" W; thence to 30°44'55" N, 081°29'18" W; thence to 30°46'35" N, 081°29'18" W; thence to 30°47'02" N, 081°29'34" W; thence to 30°47'21" N, 081°29'39" W; thence to 30°48'00" N, 081°29'42" W; thence to 30°49'07" N, 081°29'56" W; thence to 30°49'55" N, 081°30'35" W; thence to 30°50'15" N, 081°31'08" W; thence to 30°50'14" N, 081°31'30" W; thence to 30°49'58" N, 081°31'45" W; thence to 30°49'58" N, 081°32'03" W; thence to 30°50'12" N, 081°32'17" W; thence following the land based perimeter boundary to the point of origin.

(c) *Regulations.* (1) No person or vessel may enter or remain within the security zone without the permission of the COTP Jacksonville or designated representative.

(2) All persons and vessels authorized to enter the security zone shall immediately obey any direction or order of the COTP Jacksonville or designated representative.

(3) This regulation does not apply to persons or vessels operating under the authority of the United States Navy or to authorized law enforcement agencies.

3. Add § 165.732 to read as follows:

§ 165.732 Escorted Submarines Sector Jacksonville Captain of the Port Zone.

(a) *Location.* The following areas are regulated navigation areas (RNA) whenever any Navy submarine (foreign or domestic) is being escorted by the Coast Guard within the Sector Jacksonville Captain of the Port Zone territorial seas:

(1) All waters within 1 nautical mile of any Navy submarine operating within the Sector Jacksonville Captain of the Port Zone territorial seas; and

(2) All waters within 1 nautical mile of the charted center of the navigation channel from the southern tip of Crab Island in the Cumberland Sound, Georgia, to the St. Marys Entrance Channel and its approach extending eastward to lighted buoy “STM.”

(b) *Regulations.* All persons and vessels located within a RNA created by paragraph (a) shall follow all lawful orders and/or directions given to them by designated Coast Guard representatives. 33 CFR 165, subpart B, contains additional provisions applicable to the RNA created in paragraph (a) of this section.

(c) *Notification.* The Coast Guard escort will attempt, when necessary and practicable, to notify any persons or vessels inside or approaching the vicinity of a RNA created in paragraph (a) of this section of its existence via VHF Channel 16 and/or any other means reasonably available.

Dated: March 10, 2017.

S. A. Buschman,
Rear Admiral, U.S. Coast Guard,
Commander, Seventh Coast Guard District.

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